IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

CRL.A.No. 5 of 2000()

ST.2245/1996 of JUDL. MAGISTRATE OF FIRST CLASS, VAIKOM
DT. 20.8.1997.

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APPELLANT: COMPLAINANT

ANILA K.B., D/O.BHASKARAN,
KUNNAPAMCHERIL VEEDU ,
TRIPURAKARA, VAIKOM VILLAGE.

BY ADV. SRI.K.N.CHANDRABABU

RESPONDENT: ACCUSED

KARTHIKEYAN AGED 41,
PARIMALATHU VEEDU,
KARTHIKA NIVAS, KUDAVACHOOR KARA,
VAIKOM.

BY ADV. SRI.SEBASTIAN THOMAS
BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

Crl. A. No.5 of 2000

Dated 3rd July, 2007

Judgment

The appellant is the complainant in S.T.No.2245/96 with respect to the offence under section 138 N.I.Act. The same stands dismissed and the accused acquitted. The court found that notice sent was defective, as also that the cheque was issued towards security.

2. The evidence adduced in the matter consisted of the testimony of PW-1 and Exts.P1 to P4.

3. The case of the complainant is that the accused borrowed a sum of Rs.13,000/- from the complainant on 1-4-1996 and in discharge of the above amount, he issued Ext.P1 cheque dated 1-5-96. The cheque when presented for collection was dishonoured for want of funds in the account of the accused. Lawyer notice sent demanding payment of the amount was received but no reply was sent nor was the amount paid.

4. PW-1 the complainant has testified with respect to

the borrowal of the amount, execution of the cheque, presentation of the same for encashment and regarding the lawyer notice sent. She has proved Exts.P1 to P4. Ext.P2 memo shows that the cheque was dishonoured for want of funds in the account of the accused. No contra evidence was adduced. I find that the evidence of PW-1 do establish the fact of execution of the cheque. Statutory presumptions stand unrebutted.

5. The court below has found that in Ext.P3 lawyer notice, interest and notice charge of Rs.150/- has been claimed and hence notice is defective. The above stand is no longer good law.(Kunjan Panicker v. Christudas (1997 (2) KLT 539). Inference from the testimony of PW-1 is that the cheque was issued as security and hence section 138 would not be attracted. It is also incorrect. I find that the accused is guilty for the offence under section 138 N.I Act. The finding of the court below is set aside. The accused stands convicted for the offence under section 138 N.IAct and sentenced to imprisonment till the rising of the court

and to pay a compensation of Rs.13,000/- to the complainant and in default to undergo simple imprisonment for one month.

The accused shall appear before the JFCM, Vaikom on 8/8/2007 to receive the sentence.

The Crl.appeal is allowed.

K.R.UDAYABHANU,
JUDGE.

Kvm/-

K.R.UDAYABHANU, J.

CRL.NO.5 2000

JUDGMENT

3-7-2007.